



**Kathryn
Hernandez/EPR/R8/US
EPA/US**

05/30/2006 09:56 AM

To Maureen O'Reilly/ENF/R8/USEPA/US@EPA, Peggy
Livingston/ENF/R8/USEPA/US@EPA

cc

bcc

Subject Fw: Fwd: CWA issues settled

Kathryn Hernandez
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----- Forwarded by Kathryn Hernandez/EPR/R8/USEPA/US on 05/30/2006 09:56 AM -----



Kevin Murray
<kmurray@chapman.co
m>

05/25/2006 04:59 PM

To Kathryn Hernandez/EPR/R8/USEPA/US@EPA

cc

Subject Fwd:

This keeps returning, hopefully this will work.

Begin forwarded message:

> From: Kevin Murray <kmurray@chapman.com>
> Date: May 25, 2006 4:47:37 PM MDT
> To: "Mark C. Elmer" <Mark.Elmer@usdoj.gov>,
> KathrynHernandez@tmo.blackberry.net, Livingston.Peggy@epamail.epa.gov
> Cc: Kerry Gee <kcgee@unitedpark.com>
>
> As we discussed yesterday
>

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May 25, 2006

Mark C. Elmer
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
999 Eighteenth Street, Suite 945
Denver, CO 80202

Re: Richardson Flat Site: Supplemental RD/RA Consent Decree Comments

Dear Mark:

We appreciated the opportunity to discuss the RD/RA Consent Decree ("RD/RA CD") with you and EPA on the telephone last Monday. We are pleased to see that relatively few issues remain to be resolved in order to reach a final agreement. This letter is to follow up on a few outstanding issues.

1. Covenant Not to Sue - Clean Water Act. After further discussions with my colleagues and conversations that took place between Kathryn Hernandez and Kerry Gee, we have decided to withdraw our request that the United States' covenant include specific reference to claims under the Clean Water Act. This conclusion is based in large part on our agreement with EPA's position that the risk of discharges of contaminants to a water of the United States during the course of remediation is extremely attenuated. We also find comfort in CERCLA's permit shield as set forth in Section 121(e) as it relates to the Site and this Consent Decree.

2. Performance Guarantee. Our client's preference is to satisfy the performance guarantee requirement by demonstrating that it meets the financial test criteria set forth in 40 C.F.R. Section 264.143(f) with respect to the Estimated Costs of the Work and/or through a written guarantee to fund or perform the Work by a corporate affiliate of United Park City Mines Company ("United Park"). We are familiar with the financial test requirements set forth in the regulations and are confident United Park will be able to satisfy the test. The company is also willing to covenant to maintain a minimum net worth of \$10 million at all times during the course of the remedial action. For various business reasons, however, United Park is extremely sensitive about releasing important corporate financial information to a public agency where that information may or may not be protected from disclosure to third parties. We would like to

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suggest an approach where United Park would retain an independent accounting firm of EPA's choice that would review United Park's financial information and if appropriate, will certify to EPA that the company has met the requirements, including the company's compliance with its agreement to maintain a minimum net worth of \$10 million. Under this approach, the sensitive financial information would not be disclosed to EPA. In our experience, EPA sometimes retains outside firms to provide assistance in such matters and we believe this approach would be sufficient to address our client's sensitivities about disclosure of financial information.

Again, we thank you for your attention to this matter and look forward to reaching a mutually agreeable solution that will allow remediation of the Richard Flat Site to begin as soon as possible.

Very truly yours,

CHAPMAN AND CUTLER LLP


Kevin R. Murray

KRM:pw